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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/719,602

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EXAMINER

ROBERTS, LEZAH

ART UNIT

PAPER NUMBER

1612

MAIL DATE

DELIVERY MODE

10/15/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/719,602	<b>Applicant(s)</b> HOLME ET AL.	
	<b>Examiner</b> LEZAH W. ROBERTS	<b>Art Unit</b> 1612	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 27 August 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): The 102 (b) anticipated by Howard (US 5,824,291).
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: 1-14, 20-25, 29, 30, 33, 35, 39, 40 and 42-46.
- Claim(s) withdrawn from consideration: 15, 16, 18, 19, 26-28 and 36.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

/Frederick Krass/  
 Supervisory Patent Examiner, Art Unit 1612

/Lezah W Roberts/  
 Examiner, Art Unit 1612

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant has indicated the results found in the specification are sufficient to show unexpected results and that it is important for the stain removing agents not to be bound to the gum base. The Examiner submits that the results indicated by Applicant show one stain removing agent in the coating of the chewing gums and one intermingled with the gum base. The instant specification discloses that the stain removing agents are added to the chewing gum to obtain a homogeneous mixture. It is not clear how Applicant is inhibiting the stain removing agent from binding to the gum base. The ways of preventing the stain removing agents from being materially bound to the gum base are discussed on page 2 of the Remarks but these methods do not appear to be used in the examples where Applicant asserts unexpected results. Thus, it is concluded that although components such as peroxide are in the core of the chewing gum, they are not necessarily bound to the gum base. Additionally, if this was not the case and peroxide is in fact bound to the gum base when it is in the core as disclosed by the examples, it appears the objective of the invention may be achieved with only one stain removing component not materially bound to the gum base and therefore the results when both are components are not bound would be expected.

Applicant also asserts the same results when using the stain removing agents in a chewing gum were achieved as when testing the stain removing composition in vitro. The Examiner disagrees. It cannot be determined if the results are the same because according to Figs. 1 and 2, different amounts of each component are used. Ten times more of each component was used in the chewing gum than in the solution of Fig. 1. Furthermore there appears to be a lack of examples for the in vitro solutions that correspond to the chewing gum compositions. Therefore it cannot be determined if the results are the same.

In regards to the Office not presenting a reason why one of ordinary skill in the art would not expect similar results with other stain removing agent within the three categories of stain removing agents set forth in claim 1, each stain removing agent in each category has different characteristics and properties. Applicant's examples show that different combinations yield different results. Therefore it would be difficult to predict that all the stain removing components in the three categories will have the same effects.

In regards to Day, the independent claim recites anionic surfactant and does not limit the claims to stearates. Day also teaches peroxide compounds. According to Applicant's asserted results, the peroxide may be in the core without being materially bound to the gum base. Applicant also asserts that the stain removing agents are not bound to the gum base, therefore it may be concluded that the peroxides of the reference are not bound to the gum base.

In regards to Miskewitz, the basis for the conclusion that surfactants are not necessarily used in the gum base is based on the disclosure that the gum base comprises fillers, softeners, plasticizers and emulsifiers (col. 3, lines 61-67). The reference further discloses surfactants may be added to the chewing gum and comprises 0 to 3% (col. 3, lines 24-51). It is clear that the surfactants of the reference are distinct from the softeners, plasticizers and emulsifiers that are included in the gum base. It is also concluded that since the compositions of the reference are made substantially the same as those of the instant claims, that the active agents are not materially bound. Applicant does not appear to make a clear distinction of how the processes are different or how the process of the instant disclosure would inhibit the components from becoming materially bound to the base. In response to Applicant's assertion that the urea peroxide is added directly to the gum base in the reference which is contrary to the presently claimed invention, when looking to the instant disclosure, it states "The molten gum base and the filler were then added to a mixing kettle. The sugar alcohols, glycerin, flavor, high intensity sweetener and stain removing agents of the present invention were added with mixing to obtain a homogenous mixture, with the stain removing agents of the present invention, added last" (see Example 4). It is concluded the stain removing agents are mixed directly with the gum base and although they are mixed together with the gum base, they are not materially bound to the gum base.

In regards to Day in view of Sagel, Sagel is used to disclose the amount of peroxide that is used as a whitening agent and is motivation as to why one of skill in the art would encapsulate the peroxide. The primary reference discloses the combination of stain removing agents. Therefore the rejection is maintained.

In regards to Day in view of Cherukuri et al., see above in regards to Day.